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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 633

SALVATORE PANICO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 308 F. 2d 125.

JURISDICTION

The judgment of the court of appeals was entered on September 14, 1962. A petition for rehearing was denied on October 3, 1962. Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to December 2, 1962. The petition for a writ of certiorari was filed on December 3, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, after the trial court had determined on substantial evidence that petitioner was mentally competent, it could properly find in a summary proceeding that he was guilty of contempt in the presence of the court.

RULE INVOLVED

Rule 42, F.R. Crim. P., provides as follows:

> (a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.
>
> (b) Disposition Upon Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of

a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

STATEMENT

Petitioner and twelve codefendants were convicted in the United States District Court for the Southern District of New York of narcotics offenses and conspiracy. Petitioner was sentenced to imprisonment for twenty years. At the conclusion of the trial, the court, pursuant to Rule 42(a) of the Criminal Rules, summarily found petitioner and ten codefendants guilty of contempt in the presence of the court. Petitioner was sentenced on this charge to imprisonment for a period of eighteen months, to be served prior to the sentence on the indictment but after the expiration of (i) a sentence of 2½ years to 5 years imposed by a New York court (which he is currently serving) and (ii) a sentence of 18 months imposed by a Florida court. The court of appeals affirmed the conviction for contempt, Judge Friendly dissenting (Pet. App. 2a–11a; 308 F. 2d 125).[1]

The incidents which form the basis of the contempt citation occurred at the second trial under the indictment. During the first trial, frequent delays resulting from the claimed illnesses of various defendants and their counsel led the trial court to revoke bail and

[1] The court of appeals has not decided the appeals from the convictions under the indictment. The full transcript is before the court in that proceeding.

remand all defendants into custody. See *United States* v. *Bentvena*, 288 F. 2d 442, 446 (C.A. 2), and opinion of Mr. Justice Harlan, as Circuit Judge, *Fernandez* v. *United States*, 81 S. Ct. 642, 5 L. Ed. 2d 683.[2] After five and one-half months, a mistrial was declared on the eve of the summations because a juror had been injured in an accident and all alternates had been exhausted. Thereafter, various defendants were summarily held guilty of contempt and sentenced to twenty days' imprisonment. On appeal, it was held that the question had become moot as to those defendants who had already served their sentences and, as to the others, that their sentences should be affirmed. *United States* v. *Galante*, 298 F. 2d 72.

At the outset of the second trial, District Judge MacMahon warned defendants that misconduct would not be tolerated. Nonetheless, the trial was repeatedly disrupted, with the result that, upon the government's motion, bail was again revoked and the defendants again remanded into custody . *United States* v. *DiPietro*, 302 F. 2d 612, 613. The granting of the motion was affirmed by the court of appeals, which took into account the previous history of the case and "the enormous stake of the Government and the defendants that the instant trial, unlike its predecessor, should proceed without interruption to a conclusion." *United States* v. *DiPietro, supra*, 302 F. 2d at 614.

At the end of the second trial, several defendants were again summarily convicted of contempt. Ap-

[2] The court of appeals observed that the trial judge "may well have detected a general pattern of conduct not attributable to less than all of the defendants."

peals by those other than petitioner were affirmed or dismissed in *United States* v. *Bentvena,* 304 F. 2d 883. A petition for a writ of certiorari filed by co-defendant Mirra was denied. 371 U.S. 927.

The incidents on which the finding of contempt was based are set forth in the certificate of the trial judge (designated herein as "C). The pertinent facts may be summarized as follows:

1. The alleged difficulty of obtaining counsel, one of the factors which had caused disruption of the first trial (see *United States* v. *Bentvena,* 288 F. 2d 442, 445), was again asserted by numerous defendants at the retrial, resulting in its repeated adjournment between June 19, 1961, and March 1962. On March 9, all defendants had counsel and the case was set for trial on March 19, 1962. On March 12, Mr. Albert C. Aronne appeared for petitioner at a pre-trial conference and stated to the court that his previous appearances had been only for the purpose of answering the trial calendar until such time as petitioner could retain Mr. Jerome Lewis, who had represented him at the first trial. Mr. Aronne then asked leave to withdraw, stating further that he had received no fee, had acted solely out of long friendship with petitioner, and knew nothing of practice in the federal courts. After ascertaining from Mr. Aronne that he had been admitted to the bar in 1952 and that approximately half of his practice was criminal, the court denied the request. Upon learning that Mr. Aronne was not a member of the bar of the district court, the court forthwith admitted him (S.A. 1–5).

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At that point petitioner, granted leave to be heard, confirmed that he had asked Mr. Aronne to appear for him only until he was in a financial position to retain Mr. Lewis; that he knew Mr. Aronne was unfamiliar with federal practice and lacked the ability to handle his case; and that he wished additional time to get another lawyer (S.A. 6–7). The court answered that a request for substitution of another attorney would be granted at any time, but that the trial would not be delayed for that reason. It rejected as untimely a request by petitioner that another lawyer, perhaps one from Legal Aid, be assigned to him (S.A. 6–7).

On March 29, Mr. Aronne advised the court that he had been forced to go to trial in a state criminal case, but promised to obtain a substitute to represent petitioner during the first week of the instant trial, in which the testimony pertaining to petitioner and his brother (whom Mr. Aronne also represented) would be brief (S.A. 8–15). When Mr. Aronne failed to obtain a substitute, the court on April 2 appointed Mr. Todaro to represent the two Panicos and co-defendant Loicano. While a jury was being impaneled on that date the following exchange took place (C. 3–4):

> Defendant Salvatore Panico: Do these people know I don't have a lawyer? What is this, Russia? There is nobody representing me here.
>
> The Court: Sit down.
>
> Defendant Salvatore Panico: I got no lawyer here.

> The Court: Sit down. You have a lawyer. The Court has assigned an able lawyer to represent you.
>
> Defendant Salvatore Panico: He doesn't want to talk to me. I haven't paid him any money.
>
> The Court: Be quiet, please.

The next day, April 3, petitioner discussed with the court, calmly and coherently, the appointment of his new counsel, insisting that he did not wish to be represented by Mr. Todaro, but was eager, instead, to continue with Mr. Aronne (S.A. 16–17). The court explained that Mr. Todaro was an able and experienced counsel and that Mr. Aronne would return by the end of the week, at which time the vital stage of the case would be reached.

3. On May 23, at the conclusion of a recess, and as the judge ascended the bench, petitioner entered the jury box, walked the length of it, and, pushing the jurors in the front row, screamed (C. 4–5):

> Get out of here. The Judge has got me guilty. Big John, Joe B. they are the junk pushers, we're innocent. My brother and I, we haven't got anything to do with this thing. They have me in jail already. Do you understand me? They have us in jail for nothing. They got us in jail. Twenty years they want to give me. * * * Twenty years, for nothing. Ruined for life. For what? Ruined for life. For what?

Petitioner was taken from the courtroom, still screaming (C. 5).[3]

[3] This was followed by a similar outburst by petitioner's brother.

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On the following day, May 24, a witness identified co-defendant Anthony Mirra. The court said, "Let the record reflect he identified Mirra after he stood up." Mirra responded, "Let the record reflect he can't see over here." The court then directed that Mirra be removed from the courtroom (C. 5; see also government brief in opposition in *Mirra* v. *United States,* No. 389 Misc., this Term). After a colloquy between counsel and the court and a motion for a mistrial, petitioner joined in, "Let the record reflect he can see the good looking Carlie and the other punk there—the other good looking pushers there." Petitioner was likewise ordered removed from the courtroom, followed by additional motions for mistrial (C. 6–7).

On the next day, May 25, during the direct examination of a defense witness, petitioner interrupted, "DiPietro is talking about me there. He is the convicted dope pusher. Separate me from him." This was followed by a motion for mistrial on behalf of DiPietro and, again, petitioner was removed from the courtroom (C. 7–8).

4. The same day, May 25, the court asked Dr. Vitold Arnett, a psychiatrist, to examine petitioner (S.A. 20–21). In the presence of counsel, Dr. Arnett informally reported to the court his conclusion that petitioner had developed a paranoid state with psychosis and was not capable at that point of undergoing trial. He noted, however, that petitioner had a history of relative stability, that his paranoic condition was acute and temporary, that he would recover rapidly if allowed a certain amount of rest and free-

dom from tension, and that his symptoms were not consistent with faking, although there was no certain method of excluding that possibility (S.A. 22–25, 28, 29).

On May 29, Mr. Maurice Edelbaum appeared as special counsel for petitioner to assist Mr. Aronne on the issue of petitioner's mental ability to stand trial. Dr. George H. Hyslop, a psychiatrist called by the court, testified, on the basis of two personal examinations (as well as material, furnished him by the court, regarding petitioner's conduct at the trial), that petitioner considered himself sane, denied any connection with narcotics, and complained that he was being unfairly treated and could not stand it much longer (S.A. 38–42). The doctor further stated that petitioner's speech and memory were clear and coherent, that he understood the charge and the testimony of the witnesses, and that he was able to discuss the facts with his lawyer (S.A. 42–45). On cross-examination by Mr. Edelbaum, Dr. Hyslop gave his opinion that petitioner was not malingering (S.A. 47). When informed by counsel of petitioner's invasion of the jury box during the trial, the witness stated that this incident, though perhaps an hysterical display, did not in itself warrant a determination of psychosis (S.A. 51).

Dr. Arnett testified, on the basis of a further examination that very morning, that petitioner's emotional tone had definitely changed; that he was now able to remember and describe events coherently and logically, to understand the charges and the testimony, and to communicate with counsel; and that he

no longer showed symptoms of paranoia, which, on the previous examination, may have been due to the fact that he had just been physically removed from the courtroom (S.A. 66–69).

On cross-examination, Dr. Arnett stated that on his previous examination he had seen no significant evidence of malingering; and that, during the week preceding that examination, petitioner had suffered loss of appetite, decline in weight, and increasingly frequent and severe headaches, but that these symptoms did not in themselves indicate a psychotic state (S.A. 69–73). The doctor attributed the symptoms to tensions engendered by the trial, and particularly to the fear of physical violence. Petitioner still showed this fear at the second examination, but was then able to identify its source—i.e., an alleged threat by DiPietro to strangle him (S.A. 74–76).

Dr. Theodore S. Weiss, a psychiatrist, testified on behalf of petitioner. Dr. Weiss, who had read some of the minutes, heard testimony as to the episodes which occurred, and examined petitioner that day for about an hour, testified that petitioner knew what the charges were, but did not fully comprehend the proceedings and could not properly assist counsel in the defense; that he suffered from a paranoid delusion that the trial was a frame-up, involving the Black Hand or a similar organization; and that the other prisoners were hostile to him and tampered with his food (S.A. 83–87). Dr. Weiss concluded that a combination of pressures, including the pending charges in this and another case, had led petitioner to a paranoid breakdown (S.A. 91).

Mr. Aronne testified that his client complained of severe headaches, usually sat with a morose expression on his face, and quite often sighed and appeared troubled (S.A. 95–97).

Before announcing its ruling, the court stated that petitioner had appeared entirely rational in his conversations in the robing room and had shown unusual alertness for the protection of his own rights; that he was clear and coherent both in speech and memory; that he thoroughly understood the nature of the charge and what the witnesses had said; and was able to discuss the facts with his lawyers with a reasonable degree of understanding. The court, therefore, on May 29, found that petitioner was able to stand trial (S.A. 99–100).

Petitioner's motion for a mistrial was denied. The court warned petitioner that, unless he refrained from these outbursts, he would be gagged (S.A. 100–104). When asked by the court whether he would prefer to have the place of his detention changed petitioner answered in the negative. The court denied petitioner's request to be admitted to bail on the ground that he was in the custody of the State of New York on another charge (S.A. 105–107).

5. The proceedings which ensued were marked by further outbursts:

On May 31, when a codefendant was identifying himself, petitioner interrupted to ask him when he was going to tell them that Galante was in the Apalachin meeting with all of the top "hoods" and that he had there received orders for all these narcotics pushers.

Later, after he had been gagged, petitioner stood up, slammed the table and pointed to Galante (C. 8–9).

On June 5, the court refused Mr. Aronne's request to withdraw to another room for consultation with petitioner. Petitioner interrupted to ask why, accused the court of creating the delay, and asked the judge if he was crazy (C. 12). On the same day, when the jury was out, petitioner refused to consult with Mr. Aronne, saying that he no longer wished him as counsel since he was on the other side (C. 12–13).

The following day, June 6, during a recess to permit consultation of defendants with their counsel, petitioner said he would speak to the judge directly because, having dismissed Aronne, he was now without counsel (C. 14). Later in the day, while a defense attorney was questioning a doctor who had examined a codefendant to determine his sanity, petitioner interrupted, "Hey, Judge, maybe he can tell you why you shake. Let him examine you, Judge." (C. 15). Still later, petitioner again asserted that he was acting as his own lawyer (C. 15–16).

6. There followed two attempts, pretended or real, by petitioner to take his own life. At about 1:50 a.m., June 7, 1962, a police lieutenant, having just checked the area in which petitioner shared a cell with his brother and a prisoner named Palmieri, heard a noise and, thirty seconds later, saw petitioner suspended by a belt from the overhead bars of his cell. Palmieri grasped petitioner's feet and lifted him, while the lieutenant loosened the belt from above. Petitioner's breathing appeared normal and there was no discoloration except a red mark on the left side of the

neck. Petitioner said, "I want to die, let me die." The lieutenant concluded that petitioner had stood on a chair and kicked it over, making the noise which he heard. Thereafter, petitioner conversed coherently and had the full use of his faculties (S.A. 110–111). Petitioner had written a note, alleging, in explanation of his ostensible suicide attempt, that the judge and district attorney knew he and his brother were innocent; that petitioner thought himself sane, but was no longer sure; that he had unbearable pains in his head and kept forgetting what was happening; that the judge had separated them from the other men and they were treated like rats; that he dreamed some of the defendants were chasing him with knives and guns; that he could no longer stand it and must kill himself; and that he hoped his life and this letter would help others unjustly accused (S.A. 111–112). The chief medical officer at the detention headquarters wrote the assistant United States attorney, later that morning, that he found no physical trauma and that petitioner was able to attend court (S.A. 115). Still later that day, petitioner complained during a recess that he was dying, but the court denied Mr. Aronne's request that he be examined (C. 16).

On June 8, according to the report of the warden of the detention headquarters, an officer heard shouts coming from the shower room and, upon entering, found petitioner lying on the floor, both arms slashed and bleeding profusely. He was moaning and saying, "Let me die." Although the hospital report showed fourteen lacerations, requiring upwards of fifty sutures, it described petitioner's condition as good, and

made no recommendation other than that he be observed for signs of infection (S.A. 113–114).

There were further outbursts by petitioner on June 14, when he insisted that he wanted to mount the bench, and on June 15, when petitioner insisted that he wanted to get on the stand (C. 17–18). On June 14, Dr. Weiss wrote a letter to Mr. Aronne, stating his opinion, on the basis of his earlier examination of petitioner and upon the accounts of his alleged suicide attempts, that petitioner was not able adequately to confer with counsel for his defense (S.A. 108–109).

7. On June 18, Judge MacMahon wrote to Dr. Hyslop requesting that he examine petitioner again and respond to seven specific questions as to his ability to stand trial. These questions were answered in a detailed report, dated June 19, which gave an account of two further interviews with petitioner. At the first interview, petitioner had complained of a severe headache and nausea and, throughout the entire session, had been irritable, querulous and unfriendly. The doctor concluded, however, that petitioner was fully oriented and was maintaining the manifest attitude of being an unjustly treated person. At a second interview, the next day, petitioner, as he entered the room, made a lunge in the doctor's direction, used profanity, picked up a chair and held it menacingly over his head, and, finally, offered little resistance when the marshals forced him to drop the chair. Dr. Hyslop testified, however, on the basis of his professional knowledge of and experience with attempted assaults, that petitioner's purported hostility was entirely feigned (S.A. 121–131). With respect to

the second ostensible suicide attempt, the doctor noted that the lacerations on petitioner's forearms were evenly spaced and symmetrically arranged, and that his loss of blood, estimated at 200 cc, had been considerably less than the 500 cc customarily given in a blood transfusion, after which the donor usually goes about his business. He further noted the petitioner's assertions that he feared being killed by his codefendants were inconsistent with his desire to be removed from separate confinement and allowed to circulate with the other prisoners.

In reply to the specific questions asked by the judge, the doctor concluded that petitioner was able to understand the substance of the charge and the witnesses' testimony, to discuss the facts with counsel in a rational way, to communicate with clear and coherent speech, to remember events clearly, to recognize the nature and quality of his acts, and to distinguish between right and wrong (S.A. 133–134). After submitting this report to counsel, the court denied a request that petitioner be sent to Bellevue Hospital for a period of several days for examination, and denied a request for a severance (S.A. 137–140).

8. On July 5, the court executed its certificate finding petitioner guilty of contempt. The court stated that petitioner's conduct had been the most outrageous that had ever taken place in any courtroom anywhere, at any time; that petitioner had persisted throughout the trial in willful, disorderly, contemptuous disruptions and delay, impeding the conduct of the trial; that psychiatric hearings had been held for three days, after which the court found

petitioner capable of standing trial; that petitioner had thereafter faked a hanging attempt and, in slashing his wrists, made absolutely certain that the lacerations would not be fatal by spacing them approximately one inch apart; and that it was obviously to petitioner's advantage to break up the trial and do everything within his power to inject prejudice into the record, since, no matter how heavy the sentence might be for contempt, it would be insignificant compared to the sentence imposed if he were found guilty of the charges (C. 19–20).

ARGUMENT

The sustained, concerted and outrageous efforts of the defendants to disrupt the trial of this case have already been noted in prior opinions dealing with the revocation of bail and the contempt convictions of petitioner's codefendants. *United States* v. *Di Pietro,* 302 F. 2d 612; *United States* v. *Galante,* 298 F. 2d 72; *United States* v. *Bentvena,* 288 F. 2d 442. Petitioner apparently conceded below (Pet. App. 3a), and does not deny here, that his conduct was contemptuous on its face. He argues, rather, that he lacked the mental capacity to form the requisite criminal intent; that he was insane at the time of sentencing, thus vitiating the sentence; and that, in any case, the issue of *mens rea* should have been tried out under the Rule 42(b) procedure, rather than determined summarily under Rule 42(a). These contentions, we submit, are without merit and raise no issue warranting review by this Court.

1. The court's conclusion that petitioner's conduct was "willful, deliberate, calculated to impede, obstruct,

delay and abort this trial" (C. 20), and not the product of insanity, was justified both by the court's observation of the offending behavior itself and by the psychiatric testimony. One of the principal techniques employed by the defendants in their effort to obstruct the original trial, and later the retrial, was the allegation that they were having difficulties in obtaining counsel. The record shows that petitioner joined in the use of this delaying tactic before any question as to his mental competency had even arisen. Shortly before trial, Mr. Aronne, who had appeared generally for the petitioner over a period of months, attempted to withdraw on the ground that his appearance was limited to answering the calendar until the petitioner could retain Mr. Jerome Lewis, that he was inexperienced in federal practice, and indeed had never been admitted to the federal bar. Petitioner at that point personally addressed the court, explaining in lucid fashion the alleged circumstances of Mr. Aronne's employment, declaring that Mr. Aronne was incompetent to handle his case, and requesting that another attorney be appointed to replace him—a request which, in the court's view, came too late. On April 2, however, on the eve of the trial, after Mr. Aronne had notified the court a State court trial would prevent his appearance during the early stage of the trial here, the court complied with petitioner's earlier request by appointing Mr. Todaro (who had participated in the first trial) to fill the breach. Abandoning the lucidity which had characterized his appearance in chambers only a few weeks earlier, petitioner exploded with the first of his courtroom outbursts, shouting that he

was being deprived of counsel. The dissenting judge below conceded that nothing in the record suggested an excuse for petitioner's contemptuous behavior on April 2. Petitioner's subsequent conduct, particularly in light of the parallel action of his codefendants, reasonably appeared to the court as a deliberate continuation of his efforts to bring the trial to a halt. And this conclusion was reinforced by the fact that not only petitioner, but his codefendants as well, endeavored to capitalize on each occurrence as a means of obtaining a mistrial.

The judge, however, did not rely solely upon the normal inferences from petitioner's conduct. Instead, the matter of petitioner's mental competence was thoroughly explored by expert psychiatric examination and testimony in the course of the trial. Although the specific purpose of these examinations was to determine petitioner's ability to stand trial, the inquiry was equally germane to the question whether he was legally responsible for his conduct during the trial. The testimony of the two court-appointed psychiatrists, Dr. Arnett and Dr. Hyslop, on May 29 (*supra*, pp. 9–10), and particularly Dr. Hyslop's subsequent report of June 19, (*supra*, pp. 14–15), plainly justified the court's conclusion that petitioner was competent, that his suicide attempts were feigned, and that his contemptuous conduct was willful and deliberate.

The same psychiatric testimony also refutes petitioner's contention that he was insane at the time of his sentencing (Pet. App. 3a). The date of the sentencing was June 26, 1962, exactly one week after Dr. Hyslop

reported to the court that petitioner was fully oriented and able to understand the nature of the charge against him, to recognize the character and quality of his acts, to communicate clearly and coherently, and to distinguish between right and wrong (Pet. 15).

2. There remains the question whether, under the circumstances of this case, the court properly invoked the summary contempt procedure of Rule 42 (a), or whether the presence of the scienter issue required resort to the more elaborate procedure outlined in Rule 42(b). On its face, Section 42(a) seems plainly applicable, for the conduct held to be contemptuous here was committed entirely "in the actual presence of the court." Moreover, the fact that an important issue of scienter is presented is not in itself enough to render the summary procedure unavailable, for the question of *mens rea*—the subjective purpose and intent which underlies the defendant's observed speech and behavior—is likely to be a central element of many, if not most, contempt cases. In the present case, to be sure, the issue is not merely one of intent, but rather of mental capacity, a more basic question which—here, as in most other cases—requires consideration of events and circumstances outside the four walls of the courtroom. We readily concede that in all such cases the defendant must be given a full opportunity to prove, by psychiatric and other testimony, that he lacked the capacity to form the requisite criminal intent; it would be quite improper for a court to punish him for contempt without according him a hearing on that issue. No such action, however, was taken here. Nor is the Court called upon to con-

sider whether the detailed procedures of Rule 42(b) would become mandatory in a case in which the issue of mental competency had not been raised in connection with the trial itself, so that a *de novo* hearing would plainly be required before he could be convicted of contempt. This is not such a case. Here, the petitioner was given every opportunity at the trial itself to present proof that he was not competent to be tried, proof which might also have established that he was not responsible for his outrageous conduct during the trial. A qualified psychiatrist testified on petitioner's behalf; and two other psychiatrists, both appointed by the court, also gave evidence as to his mental condition during the critical period in question. On the basis of this testimony, together with his own personal observation, the judge reasonably concluded that the petitioner was competent to be tried. Precisely the same evidence supported the further conclusion that petitioner was capable of harboring the requisite criminal intent and hence was legally responsible for the conduct held to be contemptuous. Under these circumstances, we submit, the protection of the defendant's rights requires no departure from the literal terms of Rule 42(a), which clearly authorize the summary procedure utilized here. On the contrary, to require the same psychiatric testimony to be repeated in a subsequent proceeding either before the same judge, or before a different judge who lacks the benefit of having personally observed petitioner's courtroom demonstrations, would unnecessarily impair the policy of swift punishment for disruptive courtroom conduct which underlies Rule 42(a).

3. Petitioner relies upon proceedings, subsequent to his contempt conviction, whereby he was transferred from Sing Sing to Dannemora State Hospital as a schizophrenic, having been diagnosed as such by two state-appointed psychiatrists and by the psychiatrist at the prison. Such proceedings, under Section 383 of the New York Correction Law, do not, however, constitute an adjudication of insanity. *Trust Co. of America* v. *State Safe Deposit Co.,* 109 App. Div. 665, 96 N.Y.S. 585, affirmed, 187 N.Y. 178, 79 N.E. 996; *In re Stephani's Will,* 250 App Div. 253, 294 N.Y.S. 624. In any case, these post-conviction events do not appear in the record here; the government was not a party to the transfer proceedings; and we have had no opportunity to inquire into the circumstances which surrounded them. Accordingly, we submit that these events should be given no weight in the Court's deliberation here.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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